

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 47 of 1997

in

SPECIAL CIVIL APPLICATION No 6994 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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G S R T C

Versus

MAGANBHAI G PATEL

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Appearance:

M/S THAKKAR ASSOC. for Appellant.  
Mr.H.K.Rathod for Respondent.

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

Date of decision: 16/09/97

ORAL JUDGEMENT (per C.K.Thakker J.)

Admitted. Mr.H.K.Rathod, learned counsel for the

respondent waives service of notice of admission. In the facts and circumstances, the matter is taken up for final hearing to day.

2. This appeal is directed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 6994 of 1996. The appellant-Gujarat State Road Transport Corporation ("Corporation" in short) was original petitioner before the learned Single Judge which had filed the petition against the respondent-workman.

3. Relevant facts leading to the filing of the present LPA, briefly stated, are as under:

The respondent-workman was working as a Conductor with the Corporation who was discharging his duties at Surat Division on the post of Conductor. On May 15, 1986, he was transferred from Surat to Surendranagar. It is the case of the Corporation that in spite of the fact that he was transferred and it was obligatory on his part to report at Surendranagar, he failed to do so. Various letters, communications and registered notices were issued to him, yet he did not report for duty. In these circumstances, the Corporation thought it fit to hold departmental inquiry against him. A notice was issued on September 13, 1986 and he was called upon to show cause why appropriate proceedings should not be initiated against him and he should not be punished. Regular charge-sheet was issued on September 19, 1986. It is the case of the Corporation that though notices were served upon him, neither he remained present nor on his behalf next friend or any other person remained present. Proceedings were, therefore, conducted ex-parte and finally it culminated into recording of guilt against the respondent and he was dismissed from service on 15th May 1987.

The said order was challenged by resorting Industrial dispute which was registered as Reference (LCS) No.315/90 (Old No.1825/88) and the Labour Court, Surendranagar vide award dt. January 25, 1996 ordered reinstatement of the respondent-workman within 30 days from the date of the award. So far as back wages is concerned, the Tribunal was pleased to pass an order that the workman would be entitled to 75% of back wages.

3. Being aggrieved by the above award passed by the Labour Court, the appellant filed above Special Civil Application, which came up before the learned Single Judge. It was contended that the Tribunal had committed

any error of law in allowing the reference and granting reinstatement, as also 75% back wages. It was argued that when the inquiry was held in accordance with law and legality and validity of departmental proceedings was not challenged, the Labour Court ought not to have ordered reinstatement. It was also contended that in the facts and circumstances of the case, award of back wages to the extent of 75% was contrary to law, inequitable and improper.

4. The learned Single Judge after hearing the parties, held that it cannot be said that any illegality was committed by the Labour Court. According to the learned Single Judge, in the light of the provisions of Sec.11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), the Labour Court had jurisdiction to decide the question and in light of the fact that the workman was suffering from Tuberculosis, he could not remain present and hence, the order dismissing him from service could not be said to be legal and valid. As far as back wages are concerned, according to the learned Single Judge, the workman in the light of all attendant circumstances, was rightly deprived of 25% of back wages. At the same time, the learned Single Judge thought that when the workman did not remain present and had gone on leave without taking prior permission from the Corporation and in departmental inquiry also, he did not remain present, some punishment must be imposed on him. Taking into account that aspect, the learned Single Judge thought that it would be in the interest of justice if penalty of stoppage of three increments with cumulative effect is imposed on the workman. Accordingly, the said order was passed and original order was modified to that extent. Against that order the Corporation has filed the present Letters Patent Appeal.

We have heard Mrs. Pahwa, learned counsel for the appellant and Mr. Rathod for the respondent.

It is not disputed that after the award was passed by the labour Court, the workman was reinstated in service on 25th June 1996. Thus, during the pendency of Spl.C.A. the workman is reinstated. Mrs. Pahwa submitted that even if this court is of the view that the order of reinstatement does not require interference, order of payment of back wages to the extent of 75% is grossly excessive and disproportionately high. She submitted that the respondent-workman did not obey a legal and lawful order of transfer. After he was transferred from Surat to Surendranagar, he did not report for duty. No

leave was also obtained by him. Notices were issued to the workman. From the record, it appears that notices were served upon the respondent and yet he did not remain present. She also submitted that no prior leave was taken by the respondent-workman. Departmental proceedings were initiated, notices were issued and even thereafter also, he did not remain present and proceedings were conducted ex parte. In these circumstances, it cannot be said that by passing the impugned order, any illegality was committed. She, therefore, contended that even if the order of reinstatement is not illegal considering the fact that the workman was suffering from Tuberculous, then also he was not entitled to back wages.

Having heard the learned counsel for the parties, we are of the view that so far as reinstatement of the respondent is concerned, it cannot be said that any error of law apparent on the face of the record can be said to have been committed by the Labour Court. The learned Single Judge also considered and agreed with the Labour Court. When it has come on record that respondent workman was suffering from Tuberculosis, it cannot be said that by passing order of reinstatement any illegality was committed. To that extent, therefore, the order passed by the Labour Court and confirmed by the learned Single Judge does not deserve any interference.

As far as back wages, in our opinion, the Labour Court as well as the learned Single Judge have committed an error of law in granting the same to the extent of 75%, which comes to about Rs.1,75,000/-. This is not a case in which the respondent workman was illegally deprived of doing work. Looking to the record, it is clear that the respondent workman did not report for duty when he was transferred from Surat to Surendranagar. It is also proved that when the respondent did not report for duty, notices were issued to him by registered post A.D. as well as by Certificate of Posting. They were served upon him and yet he did not join at Surendranagar. According to the respondent workman, he was not well and he had subsequently produced medical certificates that he was suffering from Tuberculous. But it cannot be said that there was default or negligence on the part of the Corporation or that the Corporation wanted to take undue advantage of its own illegal action. In fact, in spite of notices, when the respondent did not report for duty, the Corporation was constrained to initiate departmental proceedings, show cause notice was issued and inquiry was held. Even in inquiry, the workman did not remain present and decision was taken ex-parte. In our opinion, the Labour Court as well as the learned Single Judge

ought to have considered that fact which was relevant and material while considering the question of awarding back wages.

Mr. Rathod for the respondent relied upon the decision in *M/s Hindustan Tin Works Pvt. Ltd. v. Employees of M/s Hindustan Tin Works Pvt. Ltd and others*, AIR 1979 SC 75. In para 9, the Court observed

" It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. it would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupor-fying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of

the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Article 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947 the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workman though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation upto the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them."

Now, reading closely the above observations, it is clear that when employer is wrong and he wants to take advantage of such situation, he should not be allowed to do so. The reason is obvious. When some illegal order is passed or act is taken by the employer though the workman is desirous of performing his duties, it is not open to such employer to deprive the employee of back wages who was not at fault. In other words, innocent employee who had not committed any wrong and who was always ready and willing to perform his duty, should not suffer. In such cases, normal rule is reinstatement with full back wages. The question, however, is in the facts and circumstances of the case whether the ratio laid down in the above case applies to the facts of the present case. As already observed, the case of the Corporation is that after the respondent workman was transferred from

Surat to Surendranagar, he did not report for duty. He remained absent unauthorisedly. Notices were issued and in spite of service of notices, he failed to join, which resulted into initiation of departmental proceeding culminating in an order of dismissal. In our opinion, therefore, ratio laid down in the above case does not apply to the case on hand.

In *Surjit Ghosh v. Chairman, & M.D. United Commercial Bank, and others*, AIR 1995 SC 1053, disciplinary proceedings were initiated against an officer of a nationalised bank. Inquiry was found to be defective and order of dismissal was held to be vitiated. Since the post in question was a post of trust and confidence, the authorities instead of directing reinstatement ordered payment of Rs. twenty lacs as compensation in lieu of reinstatement. When the matter reached the Apex Court, it was observed;

"The appellant is an ex-Army Officer. What is further, the compensation amount, if directed to be paid would come to about Rs. 20 lakhs. The Bank is a nationalised Bank and the money belongs to the public. A huge amount on this scale cannot be paid to anyone for doing no work during this long period just because the Bank feels that it has lost confidence in the employee. He can certainly be placed in a department where he has nothing to do with the monetary transactions of the Bank, such as the establishment section etc. even assuming that the Bank has reasons to lose confidence in him..... We, therefore, direct as follows- (a) the appellant should be paid a compensation of Rs. 50,000/- in lieu of his claim for arrears of salary; (b) he should be reinstated in service with continuity of service and without loss of seniority in the post to which he would be entitled to day on the basis of his continuous service, within four weeks from the date of receipt of this order."

Thus, even where the inquiry was held to be vitiated and order was held to be unlawful, an amount of compensation of Rs. twenty lacs was reduced by the Apex Court to Rs. fifty thousand only. In the instant case, legality of inquiry was not challenged. The order of dismissal was passed, which was interfered with by the Labour Court in the light of the explanation put forward subsequently by the workman that he was suffering from Tuberculous. In our opinion, therefore, order of payment of 75% of back wages by the appellant Corporation cannot be sustained. In the facts and circumstances, the

Corporation is directed too pay 25% back wages to the workman.

So far as punishment of stoppage of three increments imposed by the learned Single Judge is concerned, it is hereby set aside.

We, therefore, pass the following order;

The appellant workman is entitled to reinstatement. As he is already reinstated, no further direction is necessary.

It is, however, clarified that reinstatement will be with consequential benefits such as seniority, continuity of service, etc. except back wages.

So far as back wages is concerned, it is directed that the respondent workman will be entitled to 25% of back wages and the order passed by the Labour Court and confirmed by the learned Single Judge is substituted and modified to that extent.

This order passed by us will be complied with by the appellant before October 31, 1997.

Dt. 16.9.1997. (C.K.THAKKER J.)

(S.D.PANDIT J.)